

EDMUND G. BROWN JR., Attorney General  
of the State of California  
JOSE R. GUERRERO, State Bar No. 97276  
Supervising Deputy Attorney General  
CATHERINE E. SANTILLAN  
Senior Legal Analyst  
California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5579  
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2093

ERIC JOHN MARTIN  
3844 Bridlewood Circle  
Stockton CA 95219

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 18222

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 22, 1995, the Respiratory Care Board issued Respiratory Care Practitioner License Number 18222 to Eric John Martin (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
4 8.3, the Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3750 of the Code states:

8           “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11           “(f) Negligence in his or her practice as a respiratory care practitioner.”

12           “(g) Conviction of a violation of any of the provisions of this chapter or of any  
13 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
14 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
15 violate any provision or term of this chapter or of any provision of Division 2  
16 (commencing with Section 500).”

17           “(o) Incompetence in his or her practice as a respiratory care practitioner.”

18           7.       Section 3755 of the Code states:

19           “The board may take action against any respiratory care practitioner who is  
20 charged with unprofessional conduct in administering, or attempting to administer, direct  
21 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,  
22 repeated acts of clearly administering directly or indirectly inappropriate or unsafe  
23 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or  
24 monitoring techniques, and violation of any provision of Section 3750. The board may  
25 determine unprofessional conduct involving any and all aspects of respiratory care  
26 performed by anyone licensed as a respiratory care practitioner.”

27           8.       California Code of Regulations, title 16, section 1399.370, states:

28           “For the purposes of denial, suspension, or revocation of a license, a crime or act

1 shall be considered to be substantially related to the qualifications, functions or duties of  
2 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
3 perform the functions authorized by his or her license or in a manner inconsistent with the  
4 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
5 those involving the following:

6 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
7 abetting the violation of or conspiring to violate any provision or term of the Act.

#### 8 COST RECOVERY

9 9. Section 3753.5, subdivision (a) of the Code states:

10 "In any order issued in resolution of a disciplinary proceeding before the board,  
11 the board or the administrative law judge may direct any practitioner or applicant found to have  
12 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
13 investigation and prosecution of the case."

14 10. Section 3753.7 of the Code states:

15 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
16 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
17 administrative, filing, and service fees."

18 11. Section 3753.1 of the Code states:

19 "(a) An administrative disciplinary decision imposing terms of probation may  
20 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
21 associated with monitoring the probation. "

#### 22 FIRST CAUSE FOR DISCIPLINE

23 (Negligence; Incompetence; Unprofessional conduct)

24 12. Respondent is subject to disciplinary action under sections 3750(f)  
25 [negligence], 3750(g), 3750 (o) [incompetence], and 3755 [unprofessional conduct] in that the  
26 respiratory treatment he provided to a patient was negligent, incompetent, and constituted  
27 unprofessional conduct. The circumstances are as follows:

28 ///

1                   13.     On or about January 22, 2007, respondent worked a twelve hour night shift  
2 (from 7:00 p.m. until 7:00 a.m.) as a respiratory therapist at St. Joseph's Medical Center in  
3 Stockton, California. Respondent was assigned to provide respiratory treatment to Patient A., a  
4 male patient in the intensive care unit, who was on a mechanical ventilator due to the critical  
5 nature of his pulmonary condition. The following events occurred on January 22, 2007:

6                   14.     At 6:30 p.m., Dr. L.D. wrote a physician's order for an arterial blood gas  
7 (ABG) to be drawn at 8:00 p.m., and requested a phone call with the results. At 9:50 p.m., R.S.,  
8 the registered nurse assigned to Patient A., documented in the patient's chart that "RT Eric was  
9 reminded, per phone of ABG order." At 10:30 p.m., R.S. documented in the patient's chart that  
10 respondent had not drawn the blood gas.

11                  A.     At about 10:30 p.m., an order for oxygen saturation was written and stated  
12 that the value should be at 90%. At 10:30 p.m., Nurse R.S. noted in the patient's chart that the  
13 patient was severely hypoxic (i.e. his oxygen saturation rate was very low. Normal is 95% -  
14 100%), and the patient's rate was 86%.

15                  B.     At 10:55 p.m., R.S. documented in the patient's chart that she informed  
16 respondent that Dr. L.D. was looking for the results. Respondent admitted that Nurse R.S. called  
17 and told him that Dr. L.D. wanted the ABG draw and a phone call, but since it was late,  
18 respondent decided to wait until he performed his next round of ventilator checks to "group his  
19 patient care."

20                  15.     At 11:00 p.m., respondent performed a ventilator check and documented  
21 Patient A.'s oxygen saturation rate at 85%. At 11:10 p.m., Respondent performed the ABG  
22 draw. The results indicated that Patient A.'s oxygen level was very low at 45 mmHg but  
23 Respondent did not increase Patient A.'s oxygen saturation rate nor did he telephone Dr. L.D., as  
24 directed by the written order.

25                  16.     At 1:00 a.m., respondent performed a ventilation check and charted that  
26 Patient A.'s oxygen saturation rate was 83%. At that time, respondent increased the oxygen level  
27 on the ventilator up to 90% from 70%.

28     ///

17. Respondent's failure to follow doctor's orders by performing the arterial blood gas test, failure to telephone Dr. L.D. as requested, and failure to maintain the patient's oxygen rate at 90% is negligent, incompetent and unprofessional conduct in violation of code sections 3750(f), 3750(o) and 3755.

P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 18222, issued to Eric John Martin.

2. Ordering Eric John Martin to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: August 3, 2007

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant